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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,399	05/04/2006	Tatsuya Hattori	TAW-014US	7024
959 7590 12/28/2007 LAHIVE & COCKFIELD, LLP ONE POST OFFICE SQUARE BOSTON, MA 02109-2127			EXAMINER DAVIS, OCTAVIA L	
			ART UNIT 2855	PAPER NUMBER
			MAIL DATE 12/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/578,399	Applicant(s) HATTORI ET AL.	
	Examiner Octavia Davis	Art Unit 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 23-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                           |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/4/06, 11/27/07</u> . | 6) <input type="checkbox"/> Other: ____.                                                |

## DETAILED ACTION

Acknowledgment is made of applicant's preliminary amendment filed 5/4/06.

### *Claim Objections*

1. Claim 1 is objected to because of the following informality: On line 1, replace "An" with "A". Appropriate correction is required.

Regarding claims 23, 24, 30 and 31, the phrase "and/or" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 23, 24, 29 – 31 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke et al (5,188,456).

Regarding claims 23, 29, 30 and 36, Burke et al disclose an apparatus for thermomechanical testing of fibers comprising a working and activating means 10 for a pair of gripping jaws 18, 24, a movable member 12 connected to a front end of a sample 20, a reduced-friction or air bearing (See Col. 4, lines 28 – 32 and Col. 5, lines 43 – 47) and a load cell 32 and a displacement sensing means

70 (See Col. 4, lines 36 – 38 and Col. 6, lines 10 – 16), whereby the sample 20 stretches, extends or contracts by the action of the working means to cause the displacement of the movable member 12 of which is measured (See Col. 4, lines 43 – 45).

Regarding claims 24 and 31, the displacement is determined by stretching the sample while applying a load to the movable member in an opposite directions (See Col. 4, lines 24 – 28 and 33 - 43).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 25 - 28 and 32 - 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke et al (456') in view of Yoshida et al (3,352,151).

Regarding claims 25 – 28 and 32 – 35, Burke et al disclose a cell or housing 40, 42 that contains the sample 20 (See Col. 4, lines 45 – 48) and a sample fixing-rod 16 and stand 14 that supports the rod (See Col. 4, lines 21 - 25) but does not disclose a pulley provided on the rear side of a front end of said movable member, and a weight suspending from said pulley with a string, the rear end of said sample being fixed in said cell, and said string being horizontally supported by said movable member and said pulley so that a load is applied from said weight to said sample when extending, and said working means acting to extend said sample, thereby displacing said movable

member forward so that the extension of said sample is measured. However, Yoshida et al disclose a mechanical automatic recording apparatus for tensile testing of materials comprising an elongation magnifying device 2 and a width contraction magnifying device 3 (See Fig. 1), weights 10, 12 suspending from the guide devices and including a string 4, 5 and a working means that elongates and contracts the sample 1 of which is measured and recorded (See Col. 3, lines 58 - 61).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Burke et al according to the teachings of Yoshida et al for the purpose of, magnifying a value of elongation and width contraction and hence a load-elongation curve and elongation width contraction curve of the test specimen so as to make it easy and accurate to read the curves (See Yoshida et al, Col. 2, lines 5 - 10).

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pellerin et al (5,024,091) disclose non-destructive evaluation of structural members.

Lubahn (2,534,980) discloses a tensile testing apparatus.

Sandlass et al (5,767,402) disclose a material testing system having a dc brushless linear motor.

Strimel (3,721,119) discloses a tensile testing machine.

Widney (1,408,554) discloses an instrument of measuring hardness and resiliency.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Octavia Davis whose telephone number is 571-272-2176. The examiner can

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normally be reached on Mon through Thurs from 9 to 5. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz, can be reached on 571-271-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OD/2855

12/19/07

  
MICHAEL CYGAN, PH.D.  
PRIMARY EXAMINER